Fuelgas Company, Inc. *and* Local 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 7-CA-17225 and 7-CA-17263

December 21, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On June 8, 1981, Administrative Law Judge Bruce C. Nasdor issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief. Respondent filed cross-exceptions to a part of the Administrative Law Judge's Decision, and also filed a brief in support of part of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Fuelgas Company, Inc., West Branch and Rose City, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In adopting the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) by soliciting grievances, Member Jenkins relies on his dissenting opinion in *Uarco Incorporated*, 216 NLRB 1 (1974).

DECISION

STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge: This case was heard at West Branch, Michigan, on November 24 and 25, 1980.

The charges were filed by the Union on December 27, 1979,[1] and January 7, 1980. The complaint alleges several independent violations of Section 8(a)(1) of the Act, and the discharge of Jack Wesch, in violation of Section 8(a)(1) and (3) of the Act.[2]

Respondent denies commission of the alleged violations.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent maintains its principal office and place of business at 2290 East Hill Road, P.O. Box 1490, in Flint, Michigan, herein called the Flint office. It maintains 26 distribution branches in the State of Michigan and is, and has been at all times material herein, engaged in the sale and distribution of propane gas and related products. Respondent's distribution branches located at 2147 I-75 Business Loop, West Branch, Michigan, herein called the West Branch branch, and Route 33 North, Rose City, Michigan, herein called the Rose City branch, are the facilities involved in this proceeding. During the year ending December 31, 1979, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of its business operations, had gross revenues in excess of $500,000, and delivered at its distribution branches propane gas and other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its distribution branches in various locations throughout the State of Michigan, directly from points located outside the State of Michigan.

II. THE LABOR ORGANIZATION

It is admitted, and I find, that Local 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union), is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

In July 1979, the Union commenced an organizing campaign at Respondent's West Branch and Rose City facilities. On July 26, the Union filed a petition in Case 7-RC-15531 for the following unit of employees:

> All truck drivers, servicemen, cylinder men, utility men employed at the Employer's West Branch and Rose City, Michigan facilities, but excluding all

[1] All dates are in 1979, unless otherwise specified.

[2] Subsequent to the close of the hearing, on January 27, 1981, counsel for the General Counsel filed a motion to dimiss par. 13 of the complaint which alleges the illegal discharge of Leo Nicefield. The basis for this motion was Nicefield's proffer to withdraw Case 7-CA-17263. Both Nicefield and Respondent concurred in counsel for the General Counsel's motion. Therefore, I am granting the motion.

office clerical employees, guards and supervisors as defined in the Act.

An election was conducted on October 5, at both facilities voting as a single unit. Of the approximately 11 eligible voters, 9 votes were cast for the Union, 1 vote was cast against the Union, and 2 ballots were challenged. The two challenged ballots were not sufficient to affect the results of the election. On November 30, the Regional Director issued a supplemental decision certifying the Union as the collective-bargaining agent for the employees referred to in the above-described unit.

After receiving the petition, Thomas Lambert, vice president and general manager of Respondent, asked Lane Powell, industrial relations manager of Marathon Oil Company (of which Respondent is a wholly owned subsidiary), to conduct a training session regarding standards of conduct during the union organizational drive. All of Respondent's supervisory hierarchy, including branch managers, were present at this session, where Powell pointed out what kind of conduct would constitute an unfair labor practice. He stressed what to do, and what not to do, during the Union's organizational campaign. John Miller, attorney for Respondent, also advised management as to standards of conduct during the campaign. Miller was not present at this session.

Beginning on August 2, Lambert held a series of four meetings with the employees at Rose City and West Branch. At the first meeting, at West Branch, David Jacklyn, a serviceman, stated that he thought he should be paid the wage rate in a higher classification. According to the testimony of Jacklyn and Wesch, Lambert allegedly responded that he could not give the employees a raise even though they may have been in a higher job classification unless the employees got their cards back from the Union (union authorization cards), and then he could check into it, and give them a raise if they had one coming. At this same meeting employees complained about Frank Toms, branch manager, and about unsafe working conditions. Lambert, in his testimony, denied the statement attributed to him regarding the return of union authorization cards. He testified that employees, in particular Jacklyn, discussed wages. He reviewed the benefit policies of Fuelgas and pointed out his inability to grant any wage increases because of the wage and price guidelines.

Later that same day Lambert met with the employees at Rose City. At this meeting Lambert reviewed the history of Respondent and its acquisition of Greene's Gas Company. Employees brought up problems they believed existed at the plant. Lambert also asked the employees to give him a chance. Nicefield questioned the wage rate he was receiving and Lambert responded that he would check out all the problems the employees had raised. At the first meeting in West Branch, and later in Rose City, Lambert asked the employees what their problems were and why they needed the Union. The employees complained that they were lifting tanks which were filled with gas beyond the proper capacity, that ey were working too much overtime, and as stated ear- they complained about Toms. Lambert told the em- s he would talk to Toms and get the problems resolved. Also at the first meeting in Rose City, Lambert asked employees why they needed the Union and Nicefield complained he was not making as much money as other employees who were engaged in the same duties. Lambert allegedly responded that he could take care of that problem immediately. Moreover, he asked the employees to give him some time, that he was going to get to these problems and they should let him see what he could do. In late August, Lambert held a second meeting with the West Branch employees where he informed them that he had spoken with Branch Manager Toms, and that Respondent would make every effort to resolve the problems that had been discussed.

Thereafter, the branch managers of West Branch and Rose City commenced to conduct weekly meetings with their employees. Lambert advised the employees at West Branch during the second meeting with them that the weekly meetings would be for the purpose of employees communicating any problems they had to their branch managers. Employee Wesch testified that, during his 9 years in Respondent's employ, this was the first time such meetings had been conducted. The weekly meetings with management ceased at the Rose City branch approximately 1 week after the election, according to the testimony of Nicefield.

During the latter part of August, Jacklyn, who was the union observer at the election in West Branch, was experiencing problems with his truck. On the day in question Jacklyn called Toms at the Rose City office complaining about his truck. Toms told Jacklyn to work at the dock at West Branch until he, Toms, could get there to look at the truck. After hanging up the phone in the presence of some other employees, Jacklyn stated that he would like to kick his (Toms') ass if he were there. When Toms arrived at West Branch an employee informed him about Jacklyn's statement. Toms followed Jacklyn to the auto repair shop and brought him back to the plant in his truck. On the way back to the plant, Toms asked Jacklyn about this comment. Jacklyn admitted that he had made the alleged statement and the two of them discussed the situation and concluded that there was no sense fighting and they worked the incident out, as "gentlemen and friends." Jacklyn testified that during this conversation Toms told him "he was raising too much hell with the Union" and that Jacklyn would end up getting fired or, if the Union won the election, Respondent would "make it very hard for me to work there." Toms denied making the statements that Jacklyn attributed to him, although on cross-examination Toms testified that it was possible that the subject of the Union came up, and that he truthfully did not recall what was said about the Union.

In late August Lambert conducted a second meeting with the West Branch employees. Jacklyn testified that he told them that if the Union was voted in they would not receive the scheduled cost-of-living increase in January 1980. Jacklyn worked for Respondent from June 1977 until October 1979. He testified that, during his tenure of employment with Respondent, employees received cost-of-living raises in January of from 5 to 7 percent.

Lambert testified that he was discussing the collective-bargaining relationship between Respondent and the Union. According to him, he told the employees that cost-of-living raises were a point of negotiations and asked them rhetorically whether Respondent should give them the raises if they had voted for the Union, but if no contract had yet been negotiated.

According to the testimony of Jacklyn, Lambert held a third meeting at West Branch sometime around the middle of September. Lambert allegedly stated at this meeting that since they (the employees) received their raises they did not need the Union and that Frank Toms was working with them better. He asked the men if the reference to Toms was not so and, allegedly, stated again that they did not need the Union. In early September the employees received wage increases in varying amounts. The raises were allegedly "classification raises"; i.e., increases in pay reflecting different steps within the same classifications. Respondent takes the position that, during Lambert's meeting with the Rose City employees, Nicefield questioned his wage rate of $5 an hour. Because this rate was not specified on the Company's pay scale, Lambert became concerned and checked into the situation. He discovered that at 19 or 20 of Respondent's branches there were about 43 employees who were incorrectly classified. Accordingly, after discovering these errors he consulted with his attorney and industrial relations manager. They advised Lambert to correct the classifications and implement the wage increases. Respondent's witness, Richard Anderson, a branch manager at New Baltimore,[3] testified that Respondent's policy is to give an employee a classification raise after 6 months of employment, and then again after 18 months, at which time the employee reaches the maximum third step in the classification system.

Wesch was known to be a union adherent by virtue of the fact that he testified in mid-August on behalf of the Union at the Board representation hearing. Wesch testified in this proceeding that approximately a week before the election he talked to Frank Toms privately on or about three occasions. The conversations took place in Toms' office and according to Wesch, "He asked me what I would get out of the Union and I told him that, well, I was not sure, I would not know until the union got in there, but he said that the Union wouldn't get in, and he told me to be sure to vote no for the Union." Respondent does not deny that these statements were made by Toms to Wesch but contends that under the circumstances they do not amount to unlawful interrogation. Respondent avers that the conversation was one where Toms was merely expressing his opinion and there were no threats or statements that could in any way be construed as coercive. Moreover, Wesch's presence in Toms' office was not unusual. Respondent contends, further, that asking employees who are openly prounion why they are supporting a union is not violative of the Act.

Nicefield and James Rau, a serviceman, testified that on the night before the election they were called on the telephone by Branch Manager Richard Anderson. According to Nicefield Anderson told him that he would "hate to see me lose my job but if the Union went through, that we would all be singled out one at a time and be fired within 3 months—." According to Rau, Anderson allegedly stated "—we was making a mistake by getting a union in and he said that if it was voted in, that we would all be weeded out and fired and that he hated to see us lose our jobs." Respondent takes the position that Anderson was calling Nicefield and Rau as personal friends and merely asking them to reconsider their support for the Union and give Fuelgas a fair shake, pointing out advancement possibilities similar to his promotion. He denies telling Rau or Nicefield that they would lose their jobs. Respondent avers again that Anderson knew how they felt about the Union and he was simply expressing his own opinions; moreover, no threats were made about jeopardizing any individual's jobs.

The Termination of Jack Wesch

Wesch began his employ with Respondent in 1970. In July 1979, during the union organizational campaign, he signed a union card and distributed cards to other employees. Wesch worked at the West Branch branch; he also contacted employees at Respondent's other facilities to induce them to join the Union. He attended union meetings in July and August. Wesch testified at the representation case hearing in August on behalf of the Union. A short time after the Union was certified, Wesch asked for, and received, permission from Toms to post a notice in the West Branch facility, informing the employees that the Union had been certified and there would be a union meeting. Wesch was a transport truckdriver and he also performed light maintenance[4] on Respondent's vehicles.

Sometime after the election, Respondent discovered several unexplained acts of destruction to its property. They all occurred at the West Branch facility. The damages are documented by Respondent's records which were received into evidence. Instead of oil being used as a lubricant in a compressor, methanol was found, costing Respondent approximately $950. Truck 803 was found to contain gravel or sand in the crankcase, costing Respondent almost $1,400. Truck 801, with only 5,000 miles on it, was found to have rivets in the front assembly missing, and one wheel about to fall off.

When truck 906 was in use at West Branch, it was driven by Wesch. Wesch inspected this truck on October 22, and noted on the form used by Respondent that the foot brakes were "o.k." In December, it was discovered that transmission/power steering fluid was in the master brake cylinder rather than brake fluid. This cost Respondent almost $700 to replace and rebuild the parts in the brake system, which had been destroyed by the transmission fluid. Respondent considered these incidents to be acts of sabotage and requested the state police to keep a watch on the yard.

Generally, Wesch was assigned to drive and maintain truck 808. On November 26, the microbrake on this

[3] Not involved in this proceeding.

[4] He changed oil, tires, and filters. During the period involved in this proceeding, he was responsible only for the vehicle he drove.

truck locked up. This is a switch located on the dashboard of the truck, which locks the brakes. To correct the situation, Wesch borrowed a wrench from an employee and loosened the fitting on the brakeline to purge off some of the brake fluid. By doing this he was able to release the microbrake. Wesch testified that he had trouble with this truck before, and he advised management of this 6 months prior to his termination.

Wesch testified that he had to wait until the morning of November 27 to replace the brake fluid, because it was past quitting time on November 26 when he had the problem. According to Wesch, the backroom where the brake fluid was kept was locked.[5] He testified further that brake fluid is kept in a tall plastic bottle about a foot high and it is labeled brakefluid. The transmission/power steering fluid was also kept in the backroom, and it was in a quart container similar to an oilcan, also labeled transmission fluid. Moreover, according to Wesch's testimony, and the testimony of other witnesses, transmission fluid has a reddish color and brake fluid is clear in color.

Wesch drove the truck on November 27, 28, and 29 before going on vacation on December 6. He testified that after replacing the fluid he had no further problems with the brakes. Respondent's records revealed that no one was assigned to drive the truck from December 1 through December 5. Record evidence reveals that the truck was driven by other employees on December 6, 7, 8, 10, 11, 13, and 14.

On December 11, Toms went out on deliveries with another employee on truck 808. They were making their deliveries when they began to experience problems with the brakes "hanging up." As a result they had to release fluid from the line leading to the master cylinder in order to release the brakes. As they continued making deliveries they experienced the same problems and were forced to constantly bleed the brake system. Red fluid came out of the system. After approximately six deliveries they assessed the situation and decided to return to the facility. The employee was driving and, as he approached an intersection at approximately 5:30 p.m., where there was no stoplight, the brakes failed completely. Toms told the driver to stop the truck before reaching the intersection, even if he had to drive into a dirt bank adjacent to them or into cars parked on the side of the road. They managed to stop the truck before they reached the intersection and very carefully drove it a quarter of a mile back to the facility and parked it. Toms investigated the situation and concluded that the brake system contained transmission fluid. He had the truck taken to a garage for repairs and the entire master cylinder had to be rebuilt and all of the brake lines purged. This cost Respondent $764.

Toms investigated further and found that the last individual to service the truck was Wesch. Toms called Lambert, Respondent's vice president and general manager, on December 12, and informed him what had happened and what he had discovered. Lambert advised Toms to interview Wesch and to have Thomas Jaenicke,[6] Respondent's northern Michigan regional manager, present for the interview. Lambert instructed Toms that, if Wesch admitted he had put transmission fluid into the master cylinder, then Toms was to discharge him. If Wesch did not admit to this act, Lambert advised Toms not to fire Wesch, but to investigate the matter further.

On December 17, at approximately 8:15 a.m., when Wesch returned from his vacation, he was interviewed in Toms' office by Jaenicke and Toms. Toms told Wesch what had happened, and that transmission fluid had been found in the master cylinder and had damaged the system. Toms and Jaenicke testified that Wesch admitted he had put automatic transmission fluid in the master cylinder but stated he did not think it would make any difference and, indeed, that he did the same thing to his personal truck. Wesch was told he was being terminated. He asked Toms if it was because of the Union. Toms told him that it was not because of the Union, it was strictly because of the dangerous and unsafe conditions Wesch had created. That afternoon Jaenicke prepared a summary of the investigation and the exit interview with Wesch, which has been received into evidence as Respondent's Exhibit 22. Wesch testified that he told Toms and Jaenicke he had not put transmission fluid into the master cylinder, but he had put brake fluid into it.

Conclusions and Analysis

Record testimony developed by Respondent reveals that, after receiving the petition, Lambert asked Powell, industrial relations manager, and John Miller,[7] Respondent's attorney, to meet with Respondent's supervisory hierarchy, including the branch managers, where they would be instructed as to standards of conduct during a union organizational campaign. Unfortunately, in some cases, and in my opinion this is one, clients do not always listen to the advice given to them by their attorneys. I believe the testimony of Jacklyn, who was corroborated by Wesch, that Lambert told employees in the meeting at West Branch that he could not give them classification raises unless they requested the Union to return their authorization cards. Jacklyn impressed me as a credible witness who possessed a good memory and made a sincere effort to recount the details of the meetings. I therefore find that Respondent's unlawful promise was made to employees for the purpose of having them relinquish their support for the Charging Party in violation of Section 8(a)(1) of the Act.

Lambert testified at some length about the various meetings he conducted. He went into great detail as to what he told the employees with respect to company policy, benefits, and Federal wage and price guidelines. I am convinced, though, that he simply chose to leave out those aspects of the meeting that counsel for the General Counsel has alleged as violative of Section 8(a)(1) of the Act.

Lambert testified that Respondent did not just decide to have weekly meetings of employees in August 1979, that they had extensive training programs in the summer

[5] The unrefuted record testimony reveals that all employees had keys to the plant gate and the backroom.

[6] Record testimony reflects that it is commonplace for Jaenicke to attend similar conferences.

[7] He did not attend this meeting.

of 1977. Furthermore, according to his testimony he directed his branch managers in 1977 to conduct weekly meetings with employees. For 2 years[8] he did not know that the branch managers were not carrying out his directives. Thus, Lambert contends that the reason he updated this directive in the summer of 1979 was because these meetings were not being held. I discredit Lambert and reject this as being inherently untrue. I do not believe it is merely a coincidence that concurrent with receiving the petition and becoming aware of the Union's organizational campaign Respondent decided to revive an old policy which had been dormant for 2 years.

Furthermore, the credited evidence is clear that employees were solicited with respect to problems, complaints, or grievances they had, and Respondent impliedly promised to rectify their grievances in violation of Section 8(a)(1) of the Act. I am also cognizant of the fact that Wesch, an employee of 9 years, testified that Respondent never conducted weekly meetings during his tenure.

Jacklyn, whose credibility has already been discussed, testified regarding a conversation which occurred between him and Toms in a truck that Toms was driving. I completely credit the testimony of Jacklyn with respect to the specifics of the conversation. I discredit Toms with respect to the violative comments made during the conversation, although I believe that he got carried away because of the emotional nature of the conversation. Accordingly, I find that the statements made by Toms to Jacklyn constituted threats to impose more onerous working conditions and threats of discharge because of Jacklyn's union adherence, in violation of Section 8(a)(1) of the Act.

It is uncontroverted that, at the meetings Lambert held with the employees, the question of a cost-of-living increase, in January 1980, was raised. Lambert, according to his testimony, attempted to couch his discussion in terms of negotiations. Jacklyn's version, which is the version I credit, reflects that Lambert told the employees at West Branch that they would not receive a scheduled cost of living raise in January 1980 if the Union won the election. Even accepting Lambert's version at best, he implied that the employees would lose the raises if they selected the Union as their collective-bargaining representative. Accordingly, I conclude that this was a threat of a loss of benefit in violation of Section 8(a)(1) of the Act.

Respondent implemented a companywide wage increase after discovering errors in the classifications. However, there was no past practice of granting these increases. The timing of the increases would necessarily create the impression on the employees who received the increases that their complaints and grievances gave rise to the wage increases.[9] Moreover, Respondent had been put on notice some time earlier of Nicefield's classification, which was not one specified on Respondent's pay scale, but did nothing to remedy the situation until after the Union filed a petition. Furthermore Jacklyn, whom I believe, testified that Lambert told the employees after they received their raises, that they no longer needed the Union as a result of having received said raises. I therefore find that by implementing the wage increases pursuant to employee complaints and grievances, Respondent attempted to undermine the employees' support for the Union in violation of Section 8(a)(1) of the Act.

Respondent concedes that Toms made the statements and inquired of Wesch what he would get out of the Union under the circumstances as testified to by Wesch. Respondent defends its position by pointing out that Wesch was a known union supporter, and that it was not unusual for him or any other employee to be in Toms' office under informal circumstances. Moreover, according to Respondent, the statements do not amount to unlawful interrogation because Respondent was merely attempting to stress its position and persuade Wesch, a known union adherent, to recognize Respondent's position. In my opinion this was not permissive interrogation, because it reasonably tended to interfere with the free exercise of Wesch's Section 7 rights. As pointed out by counsel for the General Counsel no assurances were given that the information elicited would not result in reprisals. Accordingly, I find this to be interrogation within the purview of Section 8(a)(1) of the Act.

Anderson admitted calling Nicefield and Rau to urge them to vote against the Union. Their credible testimony reflects that Anderson told them they would lose their jobs if the Union won the election. Respondent bases its defense on the fact that Anderson was a friend of these employees, knew them socially, and had previously worked with them. Assuming this to be true, Board law still does not relieve a respondent for the statements made by its agents under the circumstances herein. I therefore find that Anderson's statements to these employees were threats in violation of Section 8(a)(1) of the Act.

The Termination of Wesch

In my opinion, Wesch, who had been driving a truck for over 30 years, did in fact put transmission fluid into the master cylinder of truck 808. I further believe that, at the exit interview, Wesch admitted to Toms and Jaenicke that he had put transmission fluid in the brake system, and stated he did not think it would make any difference because he did the same thing with his personal truck. With all the destruction that had occurred to Respondent's equipment I do not believe it was unreasonable for management to act as they did, even though Respondent had no way of proving that Wesch was engaging in sabatoge. It was not in my opinion unreasonable for Respondent to have suspected Wesch. It is also noted that the individuals who were working on the other pieces of equipment which they discovered to have been damaged are the same individuals who reported these acts to management. In Wesch's case this was not the situation, because the individuals driving the truck were the ones who experienced the brake failure, not Wesch. I am not unmindful of the fact that Wesch testified that he advised Respondent 6 months prior thereto that he was experiencing difficulty with the brakes.

[8] Rose City was not acquired until January 1979.

[9] Moreover, it is noted that Respondent, at an earlier date, held out the promise of remedial action in violation of Sec. 8(a)(1) of the Act. See *St. Francis Hospital*, 249 NLRB 180 (1980).

Although I have concluded that Respondent engaged in various acts in violation of Section 8(a)(1), during the preelection period, I find that the motivation for discharging Wesch almost 3 months later was his admission with respect to putting transmission fluid in the master cylinder of the truck, and not his union activity.

I do not regard Wesch as a credible witness with respect to the testimony he offered in support of his discharge. For example, he testified that he had to wait until the morning after he had trouble with the brakes, because it was after quitting time, and the backroom where the brake fluid was located was kept locked. The uncontroverted testimony by Toms is that all employees had access to the plant and the backroom, 24 hours a day, by virtue of the fact that they all had keys to the plant gate and the back door of the building.

The record is clear that there were other individuals who were equally active on behalf of the Union (e.g., Jacklyn) who were not discharged. The record is also clear that these individuals were known union adherents. I do not believe that Respondent waited 3 months to retaliate against Wesch because of his union activities.

Accordingly, I will recommend that the allegations that Wesch was discharged in violation of Section 8(a)(1) and (3) of the Act be dismissed.

Respondent raises an affirmative defense, that the allegations in the complaint alleging independent violations of Section 8(a)(1) of the Act exceed the scope of the unfair labor practice charges. In section 2 of the form "Charge Against Employer," there is a "catchall" clause which is part of the form itself stating, "[b]y the above and other acts, the above named employer has interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act." Thus, the complaint does not expand upon the charges and the allegations are related to the charges. Therefore, Respondent's defense in this regard is without merit.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By telling employees that they would receive higher wages in exchange for relinquishing their support for the Union, Respondent has committed unfair labor practices in violation of Section 8(a)(1) of the Act.
4. By soliciting complaints and grievances from employees, with the implication or promise that Respondent would favorably resolve those complaints and grievances, Respondent has committed unfair labor practices in violation of Section 8(a)(1) of the Act.
5. By threatening employees with more onerous working conditions and/or discharge because of their support for the Union, Respondent has committed unfair labor practices in violation of Section 8(a)(1) of the Act.
6. By threatening to withhold a scheduled wage increase if the employees selected the Union as their collective-bargaining representative, Respondent committed a violation of Section 8(a)(1) of the Act.
7. By implementing a wage increase pursuant to employee complaints and grievances, Respondent committed a violation of Section 8(a)(1) of the Act.
8. By interrogating an employee regarding his union sympathy and support, Respondent committed a violation of Section 8(a)(1) of the Act.
9. By threatening employees with discharge in the event the Union won the election, Respondent committed a violation of Section 8(a)(1) of the Act.
10. The allegations of the complaint that Respondent has engaged in conduct violative of Sections 8(a)(1) and (3) of the Act have not been supported by substantial evidence.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended:

ORDER[10]

The Respondent, Fuelgas Company, Inc., West Branch and Rose City, Michingan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Telling employees they would receive higher wages in exchange for relinquishing their support for the Union.

(b) Soliciting grievances and complaints with the implication that it would favorably resolve those complaints and grievances in an attempt to undermine the employees' support for the Union.

(c) Threatening employees with more onerous working conditions and/or discharge because of their support for the Union.

(d) Threatening to withhold scheduled wage increases if the employees select the Union as their collective-bargaining representative.

(e) Implementing a wage increase pursuant to employee complaints and grievances in an attempt to undermine employees' support for the Union.

(f) Interrogating employees regarding their union sympathies.

(g) Threatening employees with discharge in the event that the Union becomes the collective-bargaining representative for its employees.

(h) We will not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

[10] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Post at both premises at Rose City and West Branch, Michigan, copies of the notice marked "Appendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by an authorized representative of Respondent, shall, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

[11] In the event this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of a United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT tell our employees they will receive higher wages in exchange for relinquishing their support for the Union.

WE WILL NOT solicit complaints and grievances from our employees with the implication that we will favorably resolve those complaints and grievances in an attempt to undermine our employees' support for the Union.

WE WILL NOT threaten employees with more onerous working conditions and/or discharge because of their support for the Union.

WE WILL NOT threaten to withhold scheduled wage increases from employees if they select the Union as their collective-bargaining representative.

WE WILL NOT implement wage increases pursuant to employee complaints and grievances in an attempt to undermine their support for the Union.

WE WILL NOT interrogate our employees regarding their union sympathies and support.

WE WILL NOT threaten employees with discharge in the event the Union becomes their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act.

FUELGAS COMPANY, INC.